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FENNEMORE CRAIG, P.C.
Jay L. Shapiro (No. 014650)
Patrick J. Black (No. 017141)
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012
Telephone (602) 916-5000
Attorneys for Payson Water Company

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE COMPLAINT
OF STEVE PRAHIN,

Complainant,

v.

PAYSON WATER COMPANY,

Respondent.

DOCKET NO: W-03514A-07-0386

IN THE MATTER OF THE COMPLAINT
OF REBECCA SIGETI,

Complainant,

v.

PAYSON WATER COMPANY,

Respondent.

DOCKET NO: W-03514A-08-0047

**NOTICE OF SUPPLEMENTAL
FILING IN SUPPORT OF JULY 22,
2011 MOTION TO DISMISS AND
REQUEST FOR RULING**

Payson Water Company ("PWCo") hereby provides notice of this supplemental filing in support of its July 22, 2011, Motion to Dismiss filed in this proceeding.¹ There are several grounds upon which to grant Payson's notice, grounds which are more adequately addressed in the Motion of Dismiss. However, attached hereto as Exhibit 1 is Decision No. 72683 (November 17, 2011), which enjoins one of the complainants, Mr. Prahin, from tampering with the storage tank, well and any other plant infrastructure in the Elusive Acres subdivision. Subsequent to the Commission's order, PWCo filed a

¹ Payson incorporates the arguments contained in July 22, 2011 Motion to Dismiss.

1 complaint in Gila County not only seeking to enjoin Mr. Prahin from tampering with the
2 company's property, but looking to establish true ownership through a civil proceeding.
3 See CV2011-00389, Superior Court, County of Gila. As such, the primary issue raised by
4 complainants is being addressed in the proper forum.

5 It has been nearly five (5) years since the complaint was first filed, and keeping this
6 matter open serves no purpose. In light of the Commission's order in Decision No.
7 72683, it is proper for the hearing division to conduct no further hearings and dismiss the
8 complaint.

9 RESPECTFULLY SUBMITTED this 11th day of May, 2012.

10 FENNEMORE CRAIG, P.C.

11
12 By 

13 Jay L. Shapiro

14 Patrick J. Black

15 3003 North Central Avenue, Suite 2600

16 Phoenix, Arizona 85012

17 Attorneys for Payson Water Company

18 **ORIGINAL** and thirteen (13) copies
19 of the foregoing filed this 11th day of May, 2012:

20 Docket Control
21 Arizona Corporation Commission
22 1200 W. Washington St.
23 Phoenix, AZ 85007

24 **Copy of the foregoing hand delivered**
25 this 11th day of May, 2012 to:

26 Dwight D. Nodes
Assistant Chief Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

1 Ernest Johnson, Executive Director
2 Executive Director's Office
3 Arizona Corporation Commission
4 1200 West Washington Street
5 Phoenix, Arizona 85007

6 **Copy of the foregoing mailed**
7 **this 11th day of May, 2012 to:**

8 Rebecca Sigeti
9 HC 7 Box 451
10 Payson, Arizona 85541

11 Steve P. Prahin
12 HC 7 Box 452
13 Payson, Arizona 85541

14 James E. Dunne
15 119 West Third Place
16 Mesa, Arizona 85201

17 By: 
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6980715.1/073283.0005

EXHIBIT 1



0000132034

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

NOV 17 2011

Gary Pierce, Chairman
Bob Stump
Sandra D. Kennedy
Brenda Burns

DOCKETED BY

np

IN THE MATTER OF STATE'S
REQUEST FOR COMMISSION RELIEF
TO ORDER PAYSON WATER
COMPANY AND STEVE PRAHIN TO
ENSURE CONTINUED WATER
SERVICE TO CUSTOMERS

DOCKET NO. W-03514A-11-0412

DECISION NO. 72683

ORDER

BY THE COMMISSION:

Having been fully advised of the circumstances in this matter the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On August 18, 1989, the Commission approved a Main Extension Agreement entered into between United Utilities and Elusive Acres. On June 19, 1998, the Commission issued Decision No. 60972 in Docket Nos. W-03514A-98-0073, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, and 04, which transferred the Certificate of Convenience and Necessity of United Utilities to Brook Water. L.L.C., including that of Payson Water Company (the "Company"). The Company provides service to two subdivisions -- Geronimo Estates and Elusive Acres -- in Gila County, Arizona.

2. On June 25, 2007, Steve Prahin filed a formal complaint against the Company, in Docket No. W-03514A-07-0386, regarding water service issues. That matter is still pending before the Commission. Although that Complaint did not address ownership of certain plant infrastructure, during the course of that proceeding, Mr. Prahin has asserted that he purchased the parcel or parcels of land on which the well(s) serving Elusive Acres and/or Geronimo Estates are located at a tax sale and that he thereby acquired ownership of the well(s), tank(s) and other plant infrastructure located on the subject parcel(s).

3. By contrast, the Company asserts that it owns that infrastructure pursuant to the Main

1 Extension Agreement and Decision No. 60972, above.

2 4. As a result, a dispute currently exists as to who owns the well and other physical
3 assets located on the relevant parcel.

4 5. These assets are currently used and useful to provide water service within the
5 Company's service area. These assets are necessary to ensure continued water service and are
6 therefore dedicated to public use.

7 6. Mr. Prahin has stated on a number of occasions that he would shut off service to the
8 Company's customers and, on November 14, 2011, left a message for Commission Staff indicating
9 that he had turned off the water tank and that there would be no water in the canyon. Beginning
10 November 16, 2011, the Commission has been advised by customers of Elusive Acres and Geronimo
11 Estates that they are without water service.

12 7. Mr. Prahin has refused the Company access to the tank and well, and the Company
13 has been unable to obtain access through the assistance of law enforcement.

14 8. Due to the actions of Mr. Prahin, the Company is unable to provide and maintain
15 service to water customers absent action by this Commission.

16 9. Mr. Prahin has refused to provide water service to customers in Elusive Acres.

17 10. To the extent that Mr. Prahin has any alleged ownership interest in plant that is
18 dedicated to public use, he thereby becomes a public service corporation in fact, subject to the
19 Commission's jurisdiction, and it is necessary to appoint an interim manager to operate the plant.
20 Payson Water Company is hereby designated as said interim manager during the pendency of this
21 ongoing dispute.

22 11. Because Mr. Prahin has interfered with continued water service to the public, it is
23 necessary to appoint an interim manager to operate that plant. Payson Water Company is hereby
24 designated as said interim manager during the pendency of this ongoing dispute.

25 12. Because Payson Water Company holds a CC&N, and because Payson Water
26 Company also claims to own the plant, it is a public service corporation subject to the Commission's
27 jurisdiction.

28 13. The Company is hereby required to take all necessary and appropriate steps to ensure

1 continued water service to its customers, including serving as interim manager to Mr. Prahin (under
2 the view that Mr. Prahin may own the assets), and seeking resolution of this dispute.

3 14. The Company shall docket a report with the Commission that provides a status update
4 on this matter within two weeks from the date of this order. This report shall discuss whether the
5 Company has considered seeking a judicial resolution to this dispute. If the Company concludes that
6 seeking judicial relief is not in its best interests, or its customers' best interests, it shall explain the
7 rationale for that conclusion in its report.

8 CONCLUSIONS OF LAW

9 1. The Commission has jurisdiction over the Company, Steve Prahin and the subject
10 matter contained herein pursuant to Article XV of the Arizona Constitution and Title 40 of the
11 Arizona Revised Statutes.

12 2. Notice of the proceeding has been given in the manner prescribed by law.

13 3. The Commission finds that that an emergency situation exists which necessitates the
14 Commission's expedited action.

15 4. The owner of the plant infrastructure, whether it is the Company or Mr. Prahin, is a
16 public service corporation as defined in Article XV of the Arizona Constitution, and as such, is
17 subject to the Commission's jurisdiction.

18 5. It is in the public interest to grant the relief described in Findings of Fact 10 through
19 14 on an expedited basis.

20 ORDER

21 **IT IS THEREFORE ORDERED** that, to the extent that Mr. Prahin has any alleged
22 ownership interest in plant that is dedicated to public use, he thereby becomes a public service
23 corporation in fact, subject to the Commission's jurisdiction.

24 **IT IS FURTHER ORDERED** that, due to Mr. Prahin's interference with continued water
25 service to the public, it is necessary to appoint an interim manager to operate that plant. Payson
26 Water Company is hereby designated as said interim manager during the pendency of this ongoing
27 dispute.

28 **IT IS FURTHER ORDERED** that, inasmuch as Payson Water Company holds a CC&N

1 and also claims to own the plant, it is a public service corporation subject to the Commission's
2 jurisdiction.

3 **IT IS FURTHER ORDERED** that the Company is hereby required to take all necessary and
4 appropriate steps to ensure continued water service to its customers, including serving as interim
5 manager to Mr. Prahin (under the view that Mr. Prahin may own the assets), and seeking resolution
6 of this dispute.

7 **IT IS FURTHER ORDERED** that the Company shall docket a report with the Commission
8 that provides a status update on this matter within two weeks from the date of this order. This report
9 shall discuss whether the Company has considered seeking a judicial resolution to this dispute. If the
10 Company concludes that seeking judicial relief is not in its best interests, or its customers' best
11 interests, it shall explain the rationale for that conclusion in its report.

12 **IT IS FURTHER ORDERED** that water service shall be restored to the customers of
13 Payson Water Company served by the well and tank located on the subject real property forthwith,
14 subject to any existing tariffs of Payson Water Company, and that Payson Water Company shall be
15 granted access to all water system facilities located in the affected areas.

16 **IT IS FURTHER ORDERED** that Steve Prahin is enjoined from interfering with the
17 operation of the well, tank and other plant infrastructure which may be located on any property in
18 which he has an interest and from prohibiting the Company or its employees from accessing the plant
19 infrastructure.

20 **IT IS FURTHER ORDERED** that if Steve Prahin does not cooperate with the interim
21 operator, Payson Water Company, and allow access to all water system facilities, the Commission
22 may impose sanctions against Steve Prahin.

23 **IT IS FURTHER ORDERED** that this decision shall be effective immediately.
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BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

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CHAIRMAN

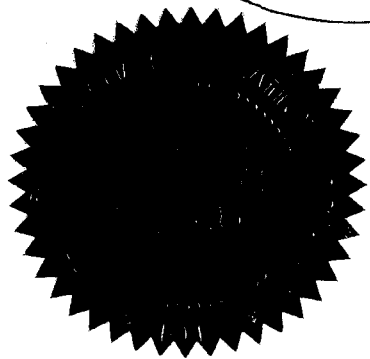
[Signature]
COMMISSIONER

[Signature]
COMMISSIONER

Paul Newman
COMMISSIONER

EXCUSED
COMM. BURNS

COMMISSIONER



IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
Executive Director of the Arizona Corporation Commission,
have hereunto, set my hand and caused the official seal of this
Commission to be affixed at the Capitol, in the City of
Phoenix, this 17th day of November, 2011.

[Signature]
ERNEST G. JOHNSON
Executive Director

DISSENT: _____

DISSENT: _____